

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON

ROBERT ALAN DANIEL, HANNA SUE
DANIEL, ROBERT ALAN DANIEL as
guardian for J.R.D., and ROBERT ALAN
DANIEL as guardian for L.J.D.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA;

Defendant.

No. 22-5303

COMPLAINT FOR INJURIES

Plaintiffs allege:

I. JURISDICTION AND VENUE

1.1 This action is brought pursuant to the authority of the Federal Tort Claims Act, Title 28, §§2671, et seq. and Title 28, §1346 (b) of the United States Code.

1.2 Pursuant to 28 USC § 2672 and 2675(a) on October 20, 2021, by priority US Mail, Plaintiffs filed and presented administratively a claim for damages on standard form 95 to Defendant's agency the United States Forest Service, ASC Claims Branch, 101 B Sun Avenue NE, Albuquerque, New Mexico, 87109. The expected delivery day was October 23, 2021. The filing and service of the standard form 95 took place more than six months prior to filing this action. The



1 United States Forest Service has failed to resolve the claim. Thus, the option to file suit has now
 2 accrued and this action has been commenced with the time limits established by the Federal
 3 Tort Claims Act.

4
 5 1.3 By filing and serving the Standard Form 95 more than six months prior to filing
 6 suit in this action, Plaintiffs have complied with 28 U.S. Code § 2675. Plaintiffs have complied
 7 with all procedures as required by the Federal Tort Claim Act, Title 28, §§2671, et seq. and Title
 8 28, §1346 (b) of the United States Code, and this matter is ripe for filing. Defendant has no
 9 defense based on a failure of the Plaintiffs to comply with the notice or claim filing provisions
 10 of the Federal Tort Claim Act, Title 28, §§2671, et seq. and Title 28, §1346 (b).

11
 12 1.4 Venue is proper in the above-captioned District Court pursuant to 28 USC § 1391(e)
 13 due to the acts and omissions of employees of Defendant described below in the above-captioned
 14 judicial district.

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 16 1.5 The United States of America may be served with process in accordance with Rule
 17 4(1) of the Federal Rules of Civil Procedure by serving a copy of the Summons and of the
 18 Complaint on Nicholas W. Brown, United States Attorney, by certified mail, return receipt
 19 requested at the office, United States Attorney, 700 Stewart Street, Suite 5220, Seattle, Washington,
 20 98101-1271, to the attention of the Civil Process Clerk, and by serving a copy of the Summons and
 21 Complaint on Nicholas W. Brown, Attorney General of the United States, by certified mail, return
 22 receipt requested, at the US Department of Justice, 950 Pennsylvania Avenue NW, Washington,
 23 D.C. 20530-0001, to the attention of the Civil Process Clerk.
 24

25 26 II. PARTIES

27 2.1 Plaintiff Robert Alan Daniel (“Daniel”) a resident of King County, Washington.
 28



1 On March 17, 2020, Daniel was injured on a Forest Service Road 47 ("FS 47") at mile post 14.4,
2 a road designed, constructed, maintained, or repaired by an agency of Defendant, the United
3 States Forest Service.

4 2.2 Plaintiff Hanna Sue Daniel is the adult daughter of Daniel.

5 2.3 Daniel is the widowed father of his minor children, JRD and LJD.

6 2.4 Defendant owns, operates, maintains, repairs, designed, and /or constructed Forest
7 Service Road 47 through its agency, the USDA Forest Service.
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11 **III. FACTUAL ALLEGATIONS**

12 3.1 On March 07, 2020, Daniel was within the scope of his employment with NW
13 Renewable Energy Group, LLC (dba Arsiero Logging). Daniel's duties included driving an
14 excavator on FS 47 north of Packwood, Washington in the Gifford Pinchot National Forest.

15 3.2 On March 7, 2020, FS 47 in the Gifford Pinchot National Forest was owned by the
16 Defendant United States, through its agency, the USDA Forest Service.

17 3.3 On March 7, 2020, FS 47 in the Gifford Pinchot National Forest was possessed by
18 the Defendant United States, through its agency, the USDA Forest Service.

19 3.4 Prior to March 7, 2020, FS 47 in the Gifford Pinchot National Forest had been
20 designed by an agent for the Defendant United States.

21 3.5 Prior to March 7, 2020, FS 47 in the Gifford Pinchot National Forest had been
22 constructed by an agent for the Defendant United States.

23 3.6 Prior to March 7, 2020, FS 47 in the Gifford Pinchot National Forest has, since its
24 construction, been continuously maintained by an agent for the Defendant United States.

25 3.7 Prior to March 7, 2020, FS 47 in the Gifford Pinchot National Forest had from
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27
28



1 time to time been repaired by an agent for the Defendant United States.

2 3.8 Like many roads in the Gifford Pinchot National Forest, FS 47 lies on the side of
3 a steep mountain. The terrain on the east side of FS 47 at milepost 14.4 is higher than the road
4 surface. The terrain on the west side of FS 47 at milepost 14.4 is lower than the surface of the
5 road.
6

7 3.9 Under the surface of the road of FS 47 at milepost 14.4 is a culvert. The purpose
8 of the culvert is to drain water from the higher elevation terrain on the east side of FS 47 to the
9 lower elevation terrain on the west side of FS 47 without eroding the road surface. The culvert
10 includes a metal tube which carries water underneath FS 47. Water drains from the higher
11 elevation terrain on the east side of FS 47 into the intake portion of the culvert. The tube runs
12 southeast to northwest in a downward slope underneath FS 47, draining water from the culvert
13 downhill onto the lower elevation terrain on the west side of FS 47.
14

15 3.10 Prior to, and on, March 7, 2020, the intake of the culvert on the east side of FS 47
16 at milepost 14.4 was damaged and bent. Debris, including sticks, twigs, trees, and branches
17 obstructed the intake of the culvert. As a result of this obstruction, water pooled in the drain field
18 surrounding the culvert intake.
19

20 3.11 Prior to March 7, 2020 the level of water that pooled in drain field surrounding the
21 culvert intake rose above the surface of the roadway and drained downhill to the northwest over
22 the road surface of FS 47 at milepost 14.4.
23

24 3.12 On March 7, 2020, water had accumulated and had frozen on the roadway surface
25 on FS 14, milepost 14.4. The source of the ice was water that drained on the surface of the
26 roadway from the water that pooled behind the intake of the culvert froze on the roadway surface.
27

28 3.13 On March 7, 2020, at milepost 14.4, FS 47 had a slope of 9 degrees.

1 3.14 On March 7, 2020, the shoulder on the west side of FS 47 at milepost 14.4 no
2 longer existed. The reason that the shoulder did not exist is that the water, which had been draining
3 over the surface of FS 47, had eroded the shoulder on the west side of the road. The obstruction
4 of the intake of the culvert on the east side of FS 47 caused the pooling of the water on the eastern,
5 uphill side of FS 47. The pooling of the water caused by the obstruction of the intake of the culvert
6 caused the water level to rise above the surface of FS 47. The pooling of the water on the east
7 side of FS 47 caused water to drain downhill over the surface of FS 47, which eroded the shoulder
8 on the west side of FS 47.
9

10 3.15 The obstruction of the intake of the culvert on the eastern uphill side of FS 47 at
11 milepost 14.4 on March 7, 2020 was caused by the failure of the Defendant to exercise ordinary
12 care in the maintenance or repair of FS 47 to keep FS 47 in a reasonably safe condition for
13 ordinary travel.
14

15 3.16 The failure of the Defendant to exercise ordinary care to maintain or repair FS 47
16 was a cause of the frozen water on the surface of FS 47 at milepost 14.4 and was a cause of the
17 erosion of the shoulder on the west side of FS 47 at milepost 14.4.
18

19 3.17 The failure of the Defendant to exercise ordinary care to maintain or repair FS 47
20 was a cause of the injuries suffered by Plaintiffs.
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22 3.18 The nine degree slope of FS 47 at milepost 14.4 was caused by the failure of the
23 Defendant to exercise ordinary care in the design and /or construction of FS 47 to make FS 47
24 reasonably safe for ordinary travel.

25 3.19 The failure of the Defendant to exercise ordinary care in the design or construction
26 of FS 47 was a cause of the injuries suffered by Plaintiffs.
27

28 3.20 On March 7, 2020, Daniel was driving his excavator on FS 47. He was traveling

ordinarily.

3.21 As Daniel was driving the excavator on Forest Service Road 47 at mile post 14.4, his excavator started to slide sideways, downhill, toward the northwest. Daniel attempted to arrest the slide by lowering the boom of the excavator, but was unable to arrest the slide. His excavator pitched over the embankment on the west side of FS 47, tumbled down the slope, rolled once, and landed on its treads.

3.22 Daniel was injured in this incident.

3.23 Daniel extracted himself from the excavator, climbed up the embankment, flagged a driver, and hitched a ride into Packwood, Washington where a helicopter ambulance awaited him. He was airlifted to Harborview Medical Center, Seattle, Washington, where he was treated for his injuries.

3.24 On March 7, 2020, Daniel's employer was NW Renewable Energy Group, LLC dba Arsiero Logging. The owner of NW Renewable Energy Group, LLC dba Arsiero Logging was Mike Malgarini.

3.25 Prior to March 7, 2020, Mr. Malgarini expressed his concerns about the poor condition of FS 47 to an employee of the Defendant, to wit, an engineering representative named "Sarah" who was employed by the Cowlitz Valley Ranger District. Sarah advised Mr. Malgarini that she was aware of the poor condition of FS 47, but that there was no money in the budget to maintain FS 47.

IV. CAUSE OF ACTION

4.1 On or prior to March 7, 2020, Defendant United States failed to exercise ordinary care in the design, construction, maintenance and/or repair of FS 47 at milepost 14.4 to keep it



1 reasonably safe for ordinary travel.

2 4.2 The conduct of Defendant as described above constitutes legal negligence, for
3 which Defendant owes damage to Plaintiffs.

4 4.3 The negligence of the Defendant is a cause of the injuries suffered by Plaintiffs.

5 4.4 Plaintiff Daniel's injuries include physical, mental, emotional, psychological, and
6 injuries, and monetary damages in the form of wage loss home care and medical expenses.

7 4.5 Plaintiffs Hanna Sue Daniel and JRD, and LJD suffered damages in the form of
8 loss of parental consortium and loss of the parental relationship.

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12 **V. PRAYER FOR RELIEF**

13 WHEREFORE, having stated their Complaint, Plaintiffs pray for the following relief
14 against Defendants:

15 5.1 General damages in an amount to be proven at trial, on behalf of Plaintiffs;

16 5.2 An award of special damages for the cost of medical treatment rendered to date,
17 as well as an award of prejudgment interest in addition to the cost of all of Plaintiff Daniel's
18 medical special damages;

19 5.3 An award of future medical special damages including the cost of care and
20 treatment required by Plaintiff Daniel as a consequence of Defendants' negligence;

21 5.4 An award of any and all economic losses sustained by Plaintiff Daniel as a result
22 of Defendant's negligence, including past and future wage loss, and past and future home health
23 care;

24 5.5 For such other and further relief as the Court deems just and appropriate.
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1 Dated this 3rd day of May, 2022

2 MAXWELL GRAHAM, PS

KOPLIN LAW, LLC

3 s/ Michael A. Maxwell

s/ Joseph L. Koplin

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